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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND SUPPORTING BRIEF

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vs.

THE NATIONAL CITY BANK OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, prays a writ of certiorari to review the final judgment of the Supreme Court of the Philippine Islands, October 10, 1934 (R. 174-175), which, by a divided court, affirmed in part and in part reversed the judgment of the Court of First Instance of Manila of October 16, 1933. The case involves the power of the Philippine Government to tax the Philippine branches of the National City Bank of New York. The bank sued the Collector for a refund of ₱77,324.11 paid under protest, partly taxes on its capital employed in the Islands ("capital

taxes"), and partly taxes on its deposits in the Islands ("deposits taxes"). The Court of First Instance held the deposits taxes invalid and directed their refund, but sustained the capital taxes (R. 136-137). The Philippine Supreme Court,—the CHIEF JUSTICE taking no part, and JUSTICE SANTOS dissenting,—held both classes of taxes invalid as beyond the power of the insular government (R. 142-156; 156-161).

By order of MR. JUSTICE SUTHERLAND the time within which to apply for a writ of certiorari in this case was extended for sixty days to June 9, 1935 (R. 177).

QUESTION PRESENTED

The single question is whether the Philippine Government may tax the Philippine branches of a national banking association ("national bank") of the United States.

This divides itself into two: (a) Does the tax section of the National Bank Act[1] extend to the Philippines? And (b) if not, then is there any implied prohibition against the insular government taxing the Philippine branches of a national bank?[2]

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[1] Section 41 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 112, as reenacted in Section 5219 of the Revised Statutes, as amended by the Act of March 25, 1926, c. 88, 44 Stat. 223; 12 U. S. Code, Supp., 548.

[2] The question here presented differs sharply from that in *Manuel V. Domenech, Treasurer of Puerto Rico,* v. *National City Bank of New York,* No. 386 at the October Term, 1934, of this court, decided February 4, 1935, 294 U. S. 199, in that the statutory laws of the United States not locally inapplicable are expressly extended to Puerto Rico by the Organic Act of Congress for that Island, Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (48 U. S. Code, 734); whereas, directly to the contrary, the Organic Act for the Philippine Islands provides:

> "That the statutory laws of the United States hereafter enacted *shall not apply* to the Philippine Islands,

STATUTES

FEDERAL:

(1) The former Organic Act for the Philippine Islands, the "Foraker Act" (superseded by the "Jones Law" of August 29, 1916, the present Organic Act) provided in the last sentence of its first section (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691):

> "The provisions of Section 1891 of the Revised Statutes of 1878[3] shall not apply to the Philippine Islands."

(2) The present Organic Act for the Philippine Islands, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, provides:

Preamble

> Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> Whereas for the speedy accomplishment of such a purpose it is desirable to place in the hands of the

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except when they specifically so provide, or it is so provided in this Act." (Act of August 29, 1916, c. 416, Sec. 5, 39 Stat. 545, 547; 48 U. S. Code, 1003; *Italics supplied.*)

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[3] Section 1891 of the Revised Statutes provides:

"Sec. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore"

Legislative and Taxing Powers

"Sec. 3. That * * *.

"That * * *.

"That the rule of taxation in said islands shall be uniform."

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended or repealed by the legislative authority herein provided or by Act of Congress of the United States."

"Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines."

"Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"Sec. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States; *Provided*, That acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further*, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved."

"Sec. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit:"

"Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated 'The Philippine Legislature': * * *."

"Sec. 19. That * * *.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States,

which hereby reserves the power and authority to annul the same."[4]

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

PHILIPPINE STATUTES:

Sections 1499[5] and 1502 of the Philippine Administrative Code (Philippine Act No. 2711, approved March 10, 1917) under which the taxes here involved were levied, together with the enacting clause of the Code, read as follows:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

"Section 1. *Title of Act.*—This Act shall be known as the Administrative Code.

"Sec. 1499.[5] *Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and

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[4] Repealed May 29, 1928, Public 611, 70th Congress, c. 901, 45 Stat. 986, 996. Reinstated by Public 841, 70th Congress, 2nd Session, February 28, 1929, c. 364, 45 Stat. 1348.

[5] As amended by Act No. 3199.

other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills or exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

"Sec. 1502. *Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."[6]

Other pertinent provisions of Acts of Congress and of Philippine statutes are in the Appendices (*infra,* pp. 47-74).

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[6] These two Sections 1499 and 1502 of the present Administrative Code were reenactments without change of Sections 1654 and 1657 of the former Administrative Code,

STATEMENT

This was an action in the insular Court of First Instance of Manila by the respondent bank against this petitioner as Collector of Internal Revenue of the Philippine Islands to recover ₱77,324.11 paid by the respondent bank under protest on October 23, 1931, **"as deposit and capital taxes for the first half of the year 1931"** (R. 2). The plaintiff bank (respondent here) alleged in its complaint in the Court of First Instance (Par. II; R. 2-5):

> "That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and capital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving its income therefrom. That under the laws of the United States national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, annotated), reads as follows:" (*quoting Section* 548, Title XII, U. S. Code, Supp.; *which is* R. S. 5219 *as amended;* Appendix I, *infra,* pp. 54-55) "That there is no provision in the laws of the United States of America authorizing the Philippine government to tax a national banking association both upon its capital and deposits and also impose an income tax upon its earnings."

Philippine Act No. 2657 of February 24, 1916 (*infra,* Appendix I, pp. 59-61), which was in force on August 29, 1916, the date of the enactment of the present Organic Act of Congress for the Philippines. The present Administrative Code, Act No. 2711, is, in form, simply an amendment of the former Administrative Code of 1916 (*ante,* p. 6), "for the purpose of adapting it to the Jones Law", the present Organic Act, and to the Philippine "Reorganization Act", Act No. 266.

The defendant Collector (this petitioner) in his answer in the Court of First Instance (R. 8) denied generally that the bank had any right of recovery, and insisted that the tax was properly collected under Section 1499 of the Philippine Administrative Code, as amended by Philippine Act 3199 (*ante*, pp. 6-7). The case came on for trial before the Court of First Instance on August 28, 1933, and, evidence oral and documentary was received, including copies of the articles of association of the respondent bank (R. 29-38), and of the order of the Federal Reserve Board, January 23, 1930, granting the bank's application for permission to establish branches in Manila and Cebu in the Philippine Islands ("Exhibit B", R. 39-43). The bank's by-laws were also offered in evidence ("Exhibit C", R. 48-61), and a "condensed statement of condition June 30, 1931, of The National City Bank of New York, including domestic and foreign offices" ("Exhibit D", R. 61-70), and a copy of the power of attorney to the manager of its Manila branch ("Exhibit E", R. 71-82), with a detailed statement of the monthly amounts of deposits and capital employed in the Manila Branch, for the six months ending June 30, 1931" ("Exhibit F", R. 83-112). Statements were also introduced showing how the amounts of the capital taxes and the deposit taxes respectively were computed ("Exhibits F to L", inclusive; R. 83-131). No question appears to have been made in the pleadings or at the trial or anywhere in the record of this case of the correctness and accuracy of the amounts of the taxes involved,—the "capital taxes" and the "deposit taxes" respectively,—or that they were properly computed and levied in accordance with the provisions of the Philippine statutes. The only question in this case is as to the power of the Philippine government to levy the taxes; that is to say as to the validity of the statute so far as it attempts to levy these taxes upon these "branches" in the Philippines of the National City Bank of New York.

DECISION OF THE COURT OF FIRST INSTANCE

The "Decision" of the Court of First Instance, October 16, 1933 (R. 132-137), upheld the "capital taxes"; but held the "deposits taxes" invalid, and directed the refund of their amount, ₱61,219.43, to the plaintiff bank.

OPINION OF THE PHILIPPINE SUPREME COURT

The Philippine Supreme Court divided. The majority opinion and the judgment of the court (BUTTE, J., R. 142-156, 174-175) affirms the judgment of the Court of First Instance insofar as that court held the "deposits taxes" invalid, but reverses it insofar as that court upheld the validity of the "capital taxes".

The effect of the judgment of the insular Supreme Court is, therefore, to hold the insular government without power to levy either the "capital taxes" or the "deposits taxes", —that is, that all of the taxes involved in this case, of both classes, are invalid, and beyond the power of the insular government to levy. The Chief Justice took no part in the decision (R. 156); and JUSTICE SANTOS (R. 156-161) filed a vigorous dissenting opinion.

PETITIONER'S CONTENTION

Petitioner believes that both classes of the taxes here involved,—both the "capital taxes" and the "deposits taxes",—were validly levied; that it is within the power of the Philippine government to impose them; that the taxing section of the National Bank Act (R. S. 5219) does not run to the Philippine Islands; and that, therefore, there is no federal statute limiting the general legislative and taxing powers given to the Philippine Legislature by the Organic Act in relation to these taxes; and that there is no implied limitation on those powers, so far as these taxes are concerned. And that, therefore, the judgment of the Philippine Supreme Court in this case is wrong and should be reversed, and the taxes here involved held valid.

The single question is of the power of the Philippine government to tax Philippine branches of national banks of the United States.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law of wide general interest to national banks and to the business community, and especially to the government and the people of the Philippine Islands. The question here involved, of the power of the Philippine government to tax Philippine branches of national banks of the United States, is to be differentiated sharply from the question of the power of the Puerto Rican government to tax Puerto Rican branches of United States national banks, recently decided by this court in *Domenech, Treasurer*, v. *National City Bank of New York*, 294 U. S. 199. The statutory laws of the United States do run generally to Puerto Rico, including, as this court held in the *Domenech* case, the National Bank Act with its taxing section (R. S. 5219), as well as Section 25 of the Federal Reserve Act and the balance of that Act.

But the present case presents the different situation in the Philippine Islands, where by the direction of the Congress, both in the original "Foraker Act" of 1902 and in the present Organic Act, the statutory laws of the United States do not run generally to those Islands, but the contrary; and it is believed that neither the taxing section of the National Bank Act (now R. S. 5219 as amended) nor the balance of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippines at all; and, therefore, that there is no applicable limitation, as to banks, upon the general taxing and legislative powers given to the Philippine Legislature by the Congress by the Organic Act for those Islands. This presents an important question of federal law which has not been, and it is believed should be, settled by this court.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari be granted.

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Of Counsel.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the Court of First Instance (R. 132-137) is not officially reported. The opinion of the Philippine Supreme Court (R. 142-156, majority opinion), with the dissenting opinion of Mr. JUSTICE SANTOS (R. 156-161), has not yet been officially reported.

JURISDICTION

The jurisdiction of this court is invoked under Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940. The value in controversy here, ₱77,324.11 ($38,662.05; R. 2, 7, 132, 143, 175), exceeds $25,000; and the case also involves the construction and applicability of statutes of the United States, particularly the National Bank Act and its taxing section 41 (now R. S. 5219 as amended) and Section 25 of the Federal Reserve Act as amended, as well as those sections of the Organic Act for the Philippine Islands conferring general legislative and taxing powers on the Philippine government, and other related statutes concerning the status of the Philippine government and the extension of United States statutory laws to the Islands.

The final judgment of the Philippine Supreme Court was entered October 10, 1934 (R. 174-175). On April 3, 1935, JUSTICE SUTHERLAND made an order extending the time within which to apply to this court for a writ of certiorari until June 9, 1935 (R. 177; for sixty days after April 10th).

QUESTION PRESENTED

The single question is stated in the petition (*ante*, p. 2).

STATUTES INVOLVED

These are indicated in the petition and in the appendices (*ante*, pp. 3-7, Appendices, *infra*, pp. 47-74).

STATEMENT

A statement of the case is in the petition (*ante,* pp. 8-10).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Question Presented" and "Petitioner's Contention" in the petition (*ante,* pp. 2 and 10-11).

SUMMARY OF ARGUMENT

1. This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199, decided February 4, last, in that the statutory laws of the United States do not run generally to the Philippine Islands, as they do to Puerto Rico. The National Bank Act, including its taxing section 41, now R. S. 5219 as amended, is in force in Puerto Rico because by the Organic Act for that Island the Congress directed that the statutory laws of the United States not locally inapplicable should run there. But from the earliest days the policy of the Congress as to the Philippines has been directly to the contrary. The Foraker Act of 1902, the first Organic Act, directed that the section of the Revised Statutes, Sec. 1891, extending the statutory laws of the United States to the Territories generally *should not be in effect in the Philippines;* and that was followed up by the "Jones Law" of August 29, 1916, the present Organic Act, which after declaring in its preamble the purpose of the people of the United States to withdraw their sovereignty from the Philippine Islands and to recognize their independence as soon as a stable government could be established, reciting that for that purpose it was necessary to place in the hands of the Philippine peoples as large a control over their domestic affairs as was practicable without impairing the sovereignty of the United States, directed, in Section 5 of the Act, that "the statutory laws of the United States hereafter enacted shall not

apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act". The National Bank Act has never been extended to the Philippine Islands, and is not in force there; and hence the limitations upon the taxing powers of States in relation to national banks contained in its taxing Section 41, now R. S. 5219, are not in force there, and do not in any way affect the general taxing powers of the Philippine Government with relation to banks doing business in the Islands, whether branches of national banks of the United States or foreign banks or domestic banks of the Islands.

2. The general legislative powers, including the taxing powers, reposed in the Philippine Legislature by the Organic Act, subject to the command of the Congress in Section 3 of that Act, *"That the rule of taxation in said islands shall be uniform"*, apply alike to all banks and other financial institutions and corporations doing business in those Islands. There is no exception or exemption with relation to branches of national banks. Nor can it properly be presumed that the Congress intended such branches to be exempted from taxation as "instrumentalities of the United States". Since there is no express exemption by any Act of Congress, and since the taxing section (R. S. 5219 as amended) of the National Bank Act has not been extended to the Islands, any such a presumption, if it were to be indulged, would exempt branches of national banks, not only from the insular "capital taxes" and "deposits taxes" here in question, *but also from all other insular taxation*,—the real estate tax, and the income tax, equally with the taxes here in question; since, outside of the taxing section of the National Bank Act which does not run to the Islands, there is no ground for maintaining any distinction whatever between the different classes of taxes levied by insular legislation. The rule that a "dependency may not tax its sovereign" is qualified by the *proviso* that it may do so with the sovereign's consent; so that the whole ques-

tion is really whether or not the Congress has impliedly given its consent. The presumption that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory or of a dependency applies with but limited force in the case of a bank; which is primarily a corporation for profit and is only secondarily or in a limited sense an agency of the federal government in some of its fiscal operations. The Congress has established a separate coinage and currency system for the Philippine Islands, as well as separate tariff and immigration laws. It has authorized the insular Legislature to guarantee the income of the insular Agricultural Bank, afterwards merged into the Philippine National Bank, a truly national bank for the Islands, an arm of the insular government, in a more effective sense than are United States "national banks". It has not extended the National Bank Act, nor its taxing section, to the Islands; and it has granted the insular Legislature general legislative and taxing powers, and has declared without qualification that "the rule of taxation in the islands shall be uniform". It has not expressly exempted the Philippine branches of national banks of the United States from that rule of uniformity; nor even expressly extended to the Islands the provision of Section 25 of the Federal Reserve Act, authorizing the establishment of branches of national banks in dependencies and insular possessions of the United States. The present insular legislation, under which the taxes here in question were levied, was in force in the Islands in almost exactly the same identical form as at present, in Sections 1654 and 1657 of the former Administrative Code of the Islands (Act No. 2657; approved February 24, 1916) when the Congress adopted the present Organic Act of August 29, 1916, and by Section 6 of that Act expressly continued "the laws now in force in the Philippines", "in force and effect, except as altered, amended, or modified herein", without making any exception of those bank tax sections of the Administrative Code. And they have been

in force in the Islands ever since. In view of these facts, and of the fact,—of which the Congress must be presumed to have been aware,—that, in the absence of any extension to the Islands of the taxing section of the National Bank Act, Philippine branches of United States national banks *cannot be taxed at all by the insular government by any form of taxation* and will, therefore, enjoy such a business advantage as practically to give them a banking monopoly in the Islands, *unless the Congress intended to extend the insular government's general taxing powers to them* regardless of their being "instrumentalities of the Federal government" for some fiscal purposes,—it is not to be presumed that the Congress intended to stretch a presumption to any such length; but on the contrary that it intended the insular government's general taxing powers to extend to those branch banks.

3. As already noted, the Congress by Section 6 of the Organic Act of August 29, 1916, expressly recognized and continued in force the laws then in force in the islands. This ratification included Sections 1654 and 1657 of the former Administrative Code then in force, and since reenacted in identical form, under which the taxes here in question were levied. That ratification was of course within the powers of the Congress.

4. Since Section 25 of the Federal Reserve Act authorizing the Federal Reserve Board to permit the establishment of branches of national banks in foreign countries and in "dependencies and insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands, it is not in force there, any more than is the taxing section of the National Bank Act or any other part of the National Bank Act. It follows that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and in Cebu in the Islands, offered in evidence by the bank here (R. 42-43), is wholly

void, of no effect whatever, and gives no authority for the establishment or existence of these branches in the Philippine Islands. Whatever else these so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other Act of the United States. They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the islands, or as *de facto* domestic banks of the Islands, existing and carrying on business under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license of the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be located outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended, which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

5. It follows that there is no federal limitation whatever preventing the insular government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; that the taxes are valid; and that the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila should be reversed and this case remanded with directions to dismiss the action at plaintiff's costs.

ARGUMENT

POINT I

Neither the taxing section of the National Bank Act nor any other part of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippine Islands.

A.—This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *The National City Bank of New York*, 294 U. S. 199, recently decided by this court. The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico,[7] including the National Bank Act with its taxing Section 41, now R. S. 5219 as amended, and the Federal Reserve Act including its Section 25 authorizing the Federal Reserve Board to license branches of United States national banks to be established in foreign countries and in "dependencies or insular possessions of the United States" and therein "to act if required to do so, as fiscal agents of the United States" (*Domenech* v. *National City Bank, supra*, 294 U. S. 199, 204, 205). But directly to the contrary, the statutory laws of the United States do not run generally to the Philippine Islands.[8]

The policy of the Congress with relation to the Philippine Islands has, from the beginning, differed sharply from that with relation to Puerto Rico as well as from that with relation to Hawaii and the former Territories here in the mainland United States which it was always understood were on their way to ultimate Statehood. From the begin-

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[7] Act of March 2, 1917, c. 145, 39 Stat. 952, 954; 48 U. S. Code 734.

[8] Philippine Organic Act of August 29, 1916, c. 416, Section 5, 39 Stat. 545, 547; 48 U. S. Code 1003. Former Organic Act for the Philippines, "Foraker Act", Act of July 1, 1902, c. 1369, Section 1, 32 Stat. 691; *ante*, p. 3.

ning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the "Foraker Act" of July 1, 1902, omitted the provision usually found in territorial organic Acts, — and which was incorporated in substance in the original Organic Act for Puerto Rico,[9] as well as in the present Organic Act for that island.[10] But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine "Foraker Act" of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should not be in force in those islands,[11] and followed that up by providing in Section 5 of the present Organic Act, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, 547:

> "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

"make all needful Rules and Regulations respecting

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[9] "Foraker Act for Puerto Rico", Act of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80.

[10] Act of March 2, 1917, c. 145, section 9, 39 Stat. 951, 954; 48 U. S. Code 734.

[11] Section 1891 of the Revised Statutes is the section providing generally that the Constitution and laws of the United States shall be in force in every organized Territory; *supra*, p. 3, *foot-note* 3.

the Territory or other Property belonging to the United States";

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. (*Balzac* v. *Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as "the settled law of the court" the doctrine of the separate concurring opinion of WHITE, J., in *Downes* v. *Bidwell*, 182 U. S. 244, 290-291.) With that limitation the Congress may in its discretion adopt for any territory belonging to the United States such laws and "Rules and Regulations" as it may deem fit; **and may or may not, as it shall determine to be best from time to time, extend to any territory the operation of any statute or law of the United States.**

B.—From the beginning of the government, the Congress has freely exercised this power.

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, inserted in the Organic Act a list of those of its Acts which should be in force within the particular Territory.[12] Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, and Section 9 of the Organic Act of Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657 (Appendix II,

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[12] A resumé is in Appendix II of the action of the Congress in the various territorial organic Acts prior to the time when Puerto Rico and the Philippines came to the United States by the Spanish War, with reference to extending particular Acts of Congress, or the statutory laws of the United States generally, to the various Territories (*infra*, pp. 62-66).

infra, pp. 62-64); but in the Florida Act there was added, at the end of the list, a general clause, —*"and all other Public Laws of the United States, which are not repugnant to the provisions of this Act"* (3 Stat. *supra*, at p. 658); and in the Organic Act for Wisconsin it was broadly declared that "the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof, may be applicable" (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15; Appendix II, *infra*, p. 64). Such a general extension continued thereafter to be the habit, and was embodied in the "Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was re-published without change in the 1878 edition of the Revised Statutes (*ante*, p. 3, *foot-note* 3). Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War, and when by the treaty of peace at its conclusion Puerto Rico and the Philippines were ceded to the United States, and when, at about the same time, Hawaii was annexed.

C.—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand and the other newly acquired territories on the other hand, in relation to extending to them the laws of the United States, and in relation to the apparent purpose of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised

Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely "incorporating" Hawaii into the Union. (Organic Act of Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220). And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that island,— and Puerto Rico is, therefore, not "incorporated" into the Union (*Balzac* v. *Porto Rico*, *supra*, 258 U. S. 298, 305-314),— yet as above pointed out, by the first Organic Act for that Island, the "Foraker Act" of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (*supra*, p. 2) that provision was re-enacted and continued in force, and further by Section 5 of that Act (39 Stat. at p. 953), United States citizenship was extended to the citizens of Puerto Rico.

D.—But as to the Philippine Islands, directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692; *supra*, pp. 2-3) that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 *shall not apply* to the Philippine Islands" (*italics supplied*);

and followed that up fourteen years later by the provision of Section 5 in the present Organic Act of August 29, 1916, hereinbefore quoted (*supra*, p. 4), expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this*

Act''. And in the meantime, the Congress, instead of extending the United States tariff laws to the Philippine Islands, had by the Act of August 5, 1909, c. 8, 36 Stat. 130 (Appendix I, *infra,* pp. 51-52), created a separate tariff system for those Islands; and by Section 10 of the present Organic Act of August 29, 1916, (*supra,* p. 5), it granted to the Philippine Legislative power, with the approval of the President, to modify the tariff laws for the Islands at any time and to adopt new tariffs for themselves; and likewise the authority, with the approval of the President, to modify the immigration laws and the currency and coinage laws of the Islands (39 Stat. at p. 548; *supra,* p. 5). And the Congress gave the Philippine Islands their own separate monetary unit, the peso instead of the dollar, and their own separate coinage and currency system, (''Foraker Act'', *supra,* Secs. 76-79; Act of March 2, 1903, as amended; Appendix I, *infra,* pp. 47-48). And in framing the judicial system for the Philippines, no United States courts were instituted, and no United States Attorney. In Puerto Rico, as in the Territories, there is a United States District Court and a United States District Attorney under the supervision of the Attorney General of the United States (Organic Act for Puerto Rico, Sec. 41, c. 145, 39 Stat. 951, 965); and in Hawaii there is likewise a District Court which the Congress has recognized as ''the United States District Court for Hawaii'' (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 86, 31 Stat. 141, 158; and Par. ''Second'', Sec. 128(a) of the Judicial Code as amended by the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936). But in the Philippines there is no United States District Court, nor anything corresponding to it, and no United States District Attorney. There is in those Islands but the one system of insular courts,—the local municipal courts, the Courts of First Instance, and the insular Supreme Court (Organic Act for the Philippine Islands, *supra,* Act of August 29, 1916, c. 416, Secs. 26 and 27, 39 Stat. 545, 555).

And the customs service in the Philippine Islands is not under the jurisdiction of the Secretary of the Treasury. The insular collector of customs is, and from the beginning has been, an official of the insular government. (Tariff Act for the Philippine Islands, *supra,* Act of August 5, 1909, c. 8, Sec. 25, 36 Stat. 130, 177; *Wright, Auditor,* v. *Ynchausti,* 272 U. S. 640, 646-651).

E.—The underlying reason for all these differences that the Congress has thus consistently maintained between the Philippine Islands on the one hand and the other Territories and territorial governments on the other, is plain from the preamble to the present Organic Act for those islands ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545; *supra,* pp. 3-4) declaring,

> **"Whereas, it is, as it always has been, the purpose of the United States to withdraw their sovereignty over the Philippine Islands, and to recognize their independence as soon as a stable government can be established therein";**

and is emphasized by the recent Act offering independence to the Philippines (Act of March 24, 1934, c. 84, 48 Stat. 456), which has now been accepted by the Philippine Legislature and also by the Philippine people themselves at their recent plebiscite adopting the new Constitution for the Philippine Commonwealth, so that the Philippine Islands are now on their way out from the jurisdiction of the United States and toward their own independent sovereignty.

F.—Wherever the Congress has desired a statute of the United States to extend to the Philippine Islands, it has been its uniform policy specifically to direct that the particular statute should run to and be in force in the Islands. Thus for example by Section 76 of the "Foraker Act" of July 1, 1902, it expressly extended "the laws of the United States relating to mints and coinage, so far as applicable", "to the coinage of said Islands" (39 Stat. at p. 710; Appendix I, *infra,* p. 47); and by the Act of February 6, 1905, c. 454, 33 Stat. 698, the Congress directed that the provisions of Sections 5270 to 5277 of the

Revised Statutes relating to extradition, "so far as applicable, shall apply to the Philippine Islands"; and, again, by the Act of June 15, 1917, enacted during the war, that certain sections of the neutrality laws of the United States should be extended to the Philippine Islands (Act of June 15, 1917, c. 30, Title XIII, Sec. 2, 40 Stat. 217). **But the Congress has never enacted any statute broadly extending the laws of the United States generally to the Islands in any way;** and, as illustrative of its policy toward the Islands, it has not usually included them in the recent emergency reconstruction and relief Acts passed during the past few years, although some of the provisions of a few of those Acts have been expressly extended to the Islands. Thus, for example, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named those Islands in the Act, directing (Independent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307):

> "Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by the Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

G.—In view of this established purpose of the Congress thus manifested (1) by its express direction in Section 5 of the present Organic Act of the Islands (*ante*, p. 4), that the statutory laws of the United States thereafter enacted shall not apply to the Philippines, except when they specifically so provide, "or it is so provided in this Act", (2) by its direction in Section 1 of the former Organic Act of 1902 ("Foraker Act", *supra*, p. 3) that the section of the Revised Statutes, Sec. 1891, extending the laws of the United States to the Territories generally should not be in force in the Philippine Islands, and (3) by the practice of the Congress itself expressly to extend to those islands by

name or specific designation any federal statute which it desires to put into force there, **the Attorney General of the United States, in consonance with established practice of most of the executive departments of the federal government has uniformly held that federal statutes, which do not specifically name the Philippine Islands, do not extend to those Islands, even though they do contain general language extending them to the "insular possessions" or to "places" or "territories under the jurisdiction of the United States", so long as they fail specifically to name the Philippine Islands.** Thus, for example, the Attorney General has held that the Narcotic Drugs Act of May 26, 1922, c. 202, 42 Stat. 596, does not extend to the Philippine Islands, although Section 2(b) of that Act provides broadly:

> "That it is unlawful to import or bring any narcotic drugs into the United States *or any territory under its control or jurisdiction*" (*Italics supplied*);

and that the National Prohibition Act, the *Volstead* Act of October 28, 1919, c. 85, 41, Stat. 305, 307 *et seq.*, did not run to the Philippine Islands, for similar reasons, broad as its general language was; and, quite recently, that the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, did not extend to the Philippine Islands, in spite of the broad language in Section 7(d) of that Act covering "the District of Columbia or any Territory of the United States", and "any insular possession or other place under the jurisdiction of the United States". (NARCOTIC DRUGS ACT, 34 Ops. Atty. Gen. 550, 551-553, October 17, 1925; NATIONAL PROHIBITION ACT, 32 Ops. Atty. Gen. 258, 259, June 24, 1920; NATIONAL INDUSTRIAL RECOVERY ACT,—Ops. Atty. Gen. Advance Sheets Dec. 2, 1933).

In his opinion with reference to the Narcotic Drugs Act, holding that it does not run to the Philippine Islands, the Attorney General, after quoting the language of Section 2(b) of the Act,

> "That it is unlawful to import or bring any narcotic drug into the United States *or any territory un-*

der its control or jurisdiction" (c. 202 Sec. 2(b), 42 Stat. 596; *Italics supplied*),

said (34 Ops. Atty. Gen. 550, 551-553, *supra*):

> "While ordinarily such language might be construed as embracing the United States and all of its possessions, such interpretation is not permissible when the language is measured by the test laid down in the Act of August 29, 1916, above set forth. The Narcotic Drugs Import and Export Act will be searched in vain for any language disclosing that it 'specifically' provides that it shall apply to the Philippines. * * *
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> "Additional support for the views above expressed is to be found in what may now be regarded as the well-settled manner in which Congress expresses its intention when it desires any of the Federal laws to be operative in the Philippines. In section 23 of the Income Tax Act of September 8, 1916 (39 Stat. 776), it is provided that the provisions of that Act shall extend to the 'Philippine Islands'. The Act also confers jurisdiction upon 'courts of the first instance of said Islands', and places the administration of the law so far as the Act is concerned upon the officers of these Islands. The so-called National Defense Act of June 15, 1917 (40 Stat. 217, 231), specifically confers upon the 'courts of first instance in the Philippine Islands' jurisdiction of the offenses under that Act committed within the Philippines. That Act also provides that the District Attorneys of the Philippine Islands 'shall have the powers and perform the duties provided in this Act for United States Attorneys.' In section 2 of the Narcotic Act of December 17, 1914 (38 Stat. 785, 787), it is provided that in 'the Philippine Islands administration of this Act' shall be looked after by the local internal revenue officers. The Act further provides that 'the courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands'. In the Immigration Act of February 5, 1917 (39 Stat. 874), it is provided that 'this Act shall be enforced in the Philippine Islands by officers of the general government thereof.' In the Trading with the Enemy Act of

October 6, 1917 (40 Stat. 411, 425), it is provided that the several courts of first instance in the Philippine Islands shall have jurisdiction of offenses committed under the Act within their territory. These several illustrations, considered in the light of restrictive provisions of Section 5 of the Act of August 29, 1916, *supra,* seem to forbid the extension of the Narcotic Drugs Import and Export Act to the Philippines. Also pertinent is the opinion of my predecessor (32 Op. 258), holding that section 5 of the Act of August 29, 1916, *supra,* prevented the operation of the liquor laws of the United States in the Philippines, although those laws otherwise might fairly have been interpreted to apply to such Islands.

"In conclusion, it seems proper to state that even though the correct interpretation of the Narcotic Drugs Import and Export Act were more doubtful than I find it to be, it would nevertheless be necessary to resolve that doubt against the application of the law to the Philippines **in view not only of the provisions of section 5 of the Act of August 29, 1916, supra, but also because of the provisions in section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of section 1891 of the Revised Statutes, thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed.** It may also be added that there appears to be nothing in the legislative history of the Narcotic Drugs Import and Export Act which discloses any specific intention that said laws should apply in the Philippines."

Since the Congress has never seen fit to extend either the National Bank Act or the Federal Reserve Act, nor any part of either of those Acts, to the Philippine Islands, it follows that neither of those Acts is or ever has been in force there. And of course, *a fortiori,* that neither Section 41 of the National Bank Act, its taxing Section (now R. S. 5219 as amended), nor Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in "dependencies or insular possessions of

the United States" by permission of the Federal Reserve Board, is in force in those Islands, or ever has been.

H.—Neither the taxing section of the National Bank Act nor any other part of that Act has ever been extended to the Philippine Islands.

The Act was in effect in the United States long before the American occupation of the Islands. It was originally enacted in 1864, and was carried into Section 5219 of the Revised Statutes in 1873 (Appendix I, *infra*, p. 54). It extended to the organized Territories of the United States, both by virtue of Section 1891 of the Revised Statutes and also because by Section 1 of the Act itself the Congress indicated its intention that a national bank might be organized in any Territory or in a "District" (the District of Columbia), as well as in any State. *Talbott* v. *Silver Bow County Commissioners*, 139 U. S. 438, 443-444, decided March 30, 1891, before there were any insular possessions.[13]

This taxing section, Section 41 of the original Act of

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[13] Where this court, speaking by Mr. JUSTICE BREWER, said:

> "Further, it is a general rule in the construction of statutes that when in the earlier and declaratory section the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; * * *. So, when, in the sections providing for the incorporation of national banks, the thought of their existence in States and Territories alike is affirmed, the character and extent of the banking system are disclosed; and subsequent sections must be taken to be in support, rather than in derogation, of the national feature of this national system."

But the Congress has never extended this "national system" to the Philippines.

June 3, 1864, carried into Section 5219 of the Revised Statutes, has been amended twice. *Both of these amendments are since the enactment of the present Organic Act for the Philippine Islands.* One of them was by the Act of March 4, 1923, c. 267, 42 Stat. 1499, and the other by the Act of March 25, 1926, c. 88, 44 Stat. 223; Appendix I, *infra,* pp. 54-55. *In neither of these amendments were the Philippine Islands specifically mentioned.* And, consequently, the Act as it now stands does not specifically mention those Islands (*infra,* p. 55). It follows clearly that it has never been the intention of the Congress to extend that statute to those Islands.

I.—AS TO THE FEDERAL RESERVE ACT, including particularly its Section 25 authorizing the Federal Reserve Board to approve applications of national banks of the United States to establish so-called "foreign branches" outside of the States and Territories and the District of Columbia,—that Act was first passed on December 23, 1913 (c. 6, 38 Stat. 251, 273, Appendix I, *infra,* pp. 55-56), and Section 25 as then enacted simply authorized the Federal Reserve Board to approve the application of any national banking association possessing a capital and surplus of $1,000,000 or more *"to establish branches in foreign countries or dependencies of the United States".* There was no specific reference to the Philippine Islands. **But the significant thing is that only nine days after the enactment of the "Jones Law", the present Organic Act for the Philippine Islands** of August 29, 1916, with its Section 5, specifically prescribing as above quoted, *"That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act"* (39 Stat. 545, 547; *ante,* p. 4), THE CONGRESS AMENDED SECTION 25 OF THE FEDERAL RESERVE ACT of September 7, 1916,[14] by **inserting** the words **"or insular possessions"**

[14] Act of September 7, 1916, c. 461, 39 Stat. 752, 755; Appendix I, *infra,* p. 56.

after the word "dependencies", *and made no other change in the phraseology of that section of the Federal Reserve Act.* **And made no reference to the Philippine Islands.**

This action of the Congress, in making that amendment in that way, only nine days after the enactment of the new Organic Act for the Philippine Islands, without mentioning the Philippine Islands in the amendment, seems to be the very plainest kind of an expression of its will by the Congress not to extend that section of the Federal Reserve Act to those Islands.

Plainly, had it been its will that that section of the Federal Reserve Act should run there, it surely would have expressly mentioned the Philippine Islands when amending the section only nine days after so definitely laying down the rule in Section 5 of the new Organic Act for the Islands on August 29, 1916, that no law thereafter enacted should run to those Islands, unless it specifically so declared;—instead of thus amending Section 25 only nine days later, and saying merely *"insular possessions"* and *"dependencies"*, as it did. And again, when three years afterwards it once more amended Section 25 of the Federal Reserve Act, by Section 2 of the Act of September 17, 1919 (c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601) it still retained the same phraseology *"in foreign countries or dependencies or insular possessions of the United States"*, **and once more saw fit not specifically to mention the Philippine Islands, and not specifically to extend the Act to those Islands.**

The conclusion is irresistible that it was the deliberate intent of the Congress not to extend the Federal Reserve Act to those Islands. This conclusion is reinforced when it is borne in mind that (1) as above pointed out the Congress had theretofore authorized the Philippine government to guarantee the income of the Philippine Agricultural Bank, afterwards merged into the Philippine

National Bank, owned and directly controlled by the Philippine Government, a truly national bank for the Islands, Appendices I and III, *infra,* pp. 50-51 and 67-68; (2) that the Congress must be presumed to have been aware of the existence of the Philippine National Bank and that it was practically a branch of the insular government (Philippine Acts 2612, 2747, 2938 (Appendix III, *infra,* pp. 67-74) and cognate Acts; and (3) that administratively the Federal Reserve Act was apparently regarded, at least for a long time, as not authorizing branches of national banks in the Islands. At any rate it does not appear that the Federal Reserve Board ever licensed any branches of national banks in the Philippine Islands during all the years since the Act was first passed in 1913, until 1930 when it approved the application of the respondent here, the National City Bank of New York, for the establishment of these branches in Manila and Cebu (R. 42-43).

POINT II

There is no federal statute limiting the general taxing power of the insular government over Philippine branches of national banks of the United States, or over any other banks in those islands, except the provision of Section 2 of the Organic Act that "the rule of taxation in said islands shall be uniform".

As said above (Point I, *ante,* pp. 18-31), the taxing section of the National Bank Act is not in force in those Islands, and never has been. There is no other federal statute in force there relative to the taxation of banks, either of branches of national banks of the United States or other banks, *except* the provisions of the Organic Act of the Congress endowing the Philippine Legislature with general legislative and taxing powers,[15] subject only, so far as relates to anything pertinent here, to the limitation above

[15] Organic Act, Secs. 6, 7, 8, 10, 11 and 12; *ante,* "Statute", pp. 4-5.

quoted in Section 3 of the Organic Act, "that the rule of taxation in said islands shall be uniform" (*ante*, p. 4).

It has never been even suggested in this case that the taxes here involved violate that rule of uniformity in any way. There is, therefore, no federal statute in force in the Islands prohibiting the insular Legislature from providing for, — or the insular government from levying and collecting, — the taxes here involved.

POINT III

There is no implied prohibition preventing the Philippine Government from levying these taxes, or collecting them.

A.—The taxes involved are the "capital taxes" and the "deposits taxes". No question has ever been made in this case but that both these taxes were levied and collected in strict accordance with the provisions of the Philippine statutes.[16]

B.—Since the taxing section of the National Bank Act does not run to the Philippine Islands, as above pointed out in the preceding Points of this argument, and since there is no other federal statute expressly limiting in any way the power of the Philippine Legislature to levy these taxes in the exercise of the general legislative powers and taxing powers given it by the Organic Act,[17] it necessarily follows that the taxes here involved are valid, *unless* there is some implied prohibition or limitation against or upon the power of the Philippine Legislature to impose them. *The only possible such prohibition or limitation that has been suggested in this case is a presumption that the Congress did not intend* that "a derivative sovereignty like the government of the Philippine Islands could tax the instrumentalities of the very government which brought it into existence". That was the basis, at least in part, of the deci-

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[16] Administrative Code, Secs. 1499 and 1502.

[17] *Ante*, pp. 4-5.

sion of the majority of the Philippine Supreme Court holding these taxes beyond the power of the Philippine government (R. 152-153). But, as the insular Supreme Court there recognized, the Congress may, of course, give its consent. **It comes back, therefore, to the question, simply, what was the intention of the Congress?** The presumption that a derivative sovereignty is not intended to tax instrumentalities of the superior sovereign, is after all only a rebuttable presumption; and, like other rebuttable presumptions, is only to be used as an aid in arriving at the true facts,—here as an aid in arriving at the real intent of the Congress.

C.—We are not unmindful that this court said in the Puerto Rican case, *Domenech*, Treasurer, v. *National City Bank, supra*, 294 U. S. 199, 205;

> "But like a State, though for a different reason, such an agency may not tax a federal instrumentality. * * *. A Territory or a possession may not do so because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an Act of Congress clearly and explicitly conferring the privilege will suffice. Not only do we find no such statutory consent but we are confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico";

but, as appears from the above quotation, that was said in relation to a very different situation from that presented here.

As there said, in the Puerto Rican case, the court was "confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico."

But that situation was directly opposite, or contrary, to that

with which we are dealing here; where, as we have already shown in the preceding Points of this argument, that statute, R. S. 5219, *does not run in the Philippines,* and the Congressional declaration in the Philippine Organic Act is directly to the contrary of that in the Puerto Rican Act; and is, that statutes of the United States *shall not apply* in the Philippine Islands "except when they specifically so provide, or it is so provided in this Act"; that is to say, unless the particular Act has been specifically extended to the Islands by the Congress,—which is not the case with either the National Bank Act or the Federal Reserve Act.

D.—Coming back then to the question of the actual intent of the Congress,—whether or not it was the Congressional intent that the presumption that a subordinate sovereignty should not tax instrumentalities of the superior sovereign should apply to these bank taxes,—and picking up all of the pertinent Acts of the Congress, as we would a deed, "by the four corners", and looking them over together, we find:

(1) That the Congress has expressed its plain intent that the National Bank Act should not be in force in the Philippine Islands; and, therefore, that its taxing Section 41, now R. S. 5219, should not apply there; that neither the National Bank Act nor the Federal Reserve Act has been extended to those Islands;

(2) That, in the Philippines, the Congress has established or authorized systems of laws that are different in many ways from those in force in the Territories and in the other insular possessions and in the States,—a different monetary system, different tariff laws, different immigration laws, different customs laws, a different judicial system;—and in particular, with relation to the matter here immediately at hand, that it has authorized the Philippine government to guarantee the income of the Agricultural Bank,—a kind of national bank for the Philippine Islands, now merged in the government owned Philippine

National Bank, a bank which throughout its history has been very truly and really a government institution of the Philippine Islands,—practically a branch of the insular government;

(3) That the Congress has given full legislative and taxing powers to the Philippine Legislature, unrestricted by any kind of express limitation with reference to imposing taxes on banks or on other property, *except* by the limitation in Section 2 of the Organic Act, "That the rule of taxation in said islands shall be uniform";

(4) That by Section 6 of the present Organic Act,[18] enacted August 29, 1916, the Congress enacted that "**the laws now in force in the Philippines shall continue in force and effect,** except as altered, amended, or modified herein", without making any modification or alteration or limitation whatever as to the power of the Philippine Legislature in relation to the taxation of banks; and, further, that the Congress must be conclusively presumed to have been aware, when it enacted that Section 6 of the Organic Act, that among the laws then in force in the Philippine Islands, which it was thus ratifying, were Sections 1654 and 1657 of the Administrative Code of February 24, 1916, Act No. 2657 of the Philippine Legislature,[19] which contained the same provisions afterwards carried forward by Philippine Act No. 2711, March 10, 1917, into Sections 1499 and 1502 of the present Administrative Code of the Islands, under which the taxes here involved were levied;[20] and also Act 2612, Appendix III, *infra*, pp. 67-72, enacted February 4, 1916, creating the Philippine National Bank and merging (Sec. 6, pp. 67-68 *infra*) the Government Agricultural Bank into it;

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[18] *Ante*, p. 4.

[19] Appendix I, *infra*, pp. 59-61.

[20] *Ante*, pp. 6-7. The present Administrative Code was enacted as an amendment to the former Administrative Code of 1916 in force when the present Organic Act for

(5) That by Section 19 of the Organic Act, the Congress directed (39 Stat. at p. 551; *ante*, pp. 5-6):

> "All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same";

and that although the present Administrative Code of the Philippine Islands, including those Sections 1499 and 1502, reenacting as above pointed out Sections 1654 and 1657 of the former Administrative Code, was itself enacted by the Philippine Legislature on March 10, 1917, only six months after the Organic Act was passed, and was expressly enacted, as is recited in its enacting clause, "for the purpose of adapting it to the Jones Law", the Organic Act, nevertheless the Congress has never seen fit to annul either of these sections or any of the kindred sections of the Administrative Code relating to the taxation of banks;

(6) That the Congress must be presumed to have been aware that, so long as it refrained from extending the taxing section of the National Bank Act to the Philippine Islands, the result was that, *unless* it was its intention and it was to be understood as leaving the Philippine Legislature unhampered to exercise its taxing powers uniformly as to all banks in the Islands including any branches of national banks established there, it would necessarily follow that the Philippine Legislature could not impose any taxes of any kind whatever upon such Philippine branches of United States national banks (if they could validly be established there at all), either income taxes or real estate

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the Islands was passed by the Congress. The enacting clause of the present Administrative Code reads:

> "For the purpose of adapting it to the Jones Law and the Reorganization Act, Act No. 2657, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:" (*Ante*, p. 6).

taxes or any other taxes of any kind; since, in the absence of the direction contained in the taxing section of the National Bank Act, there is no provision anywhere in the federal statutes authorizing the Philippine Legislature to levy one kind of taxes, but not another kind, upon branches of national banks established in the Islands, and such branches must either be wholly tax-free or else wholly subject to the taxing power given the Legislature by the Organic Act; and

(7) That if such national bank branches were to be construed to have such complete tax exemption in the Islands, it would give them such a business advantage as practically to yield them a monopoly of the banking business in the Islands and would also necessarily

(8) Very greatly hamper the business, and greatly injure the income, of the Philippine National Bank, the government owned successor of the Agricultural Bank of the Islands, the income of which the Congress had expressly authorized the Philippine government to guarantee, which is practically an arm of the Philippine government; and

(9) That, as to banks in the Islands, it *would utterly destroy the uniformity of taxation which the Congress had expressly enjoined* by the clause in Section 2 of the Organic Act for the Philippines above quoted, "That the rule of taxation in said Islands shall be uniform".

THOSE ARE THE THINGS WHICH WE FIND WHEN WE PICK UP THE PERTINENT LEGISLATION OF THE CONGRESS "BY THE FOUR CORNERS" AND EXAMINE IT. There is one further consideration to be borne in mind, viz.:

(10) That, after all, the usual *presumption* that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory, or of an insular possession, *applies with but limited force in the case of a bank,*

which is primarily a corporation for profit, and is only secondarily or in a limited sense, an agency of the Federal government in some of its fiscal operations. As this court said in *Talbott* v. *Silver Bow County, supra,* 139 U. S. 438, 445-446;

> "A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation."

Now, taking all those things into consideration, what was the real Congressional intent? Are we blindly to follow a presumption against its being intended that a subordinate sovereignty shall tax the superior sovereign, or its instrumentalities of any kind? Or, under these circumstances, does that presumption accord with what appears to have been the real intent of the Congress? Plainly it does not. The whole course of the Congressional legislation here involved rebuts that presumption as applied to these taxes levied by authority of the Philippine Legislature upon these banks by virtue of the general legislative and taxing powers with which the Congress has endowed that Legislature. The contrary conclusion would lead to results which the Congress cannot have intended.

If the Congress had intended to limit the taxing powers of the insular Legislature with respect to any bank established in the Islands,—whether branches of national banks or others, it would have done so in express terms, either by expressly extending the National Bank Act with its taxing section to those Islands, as it has specifically extended various other Acts to the Islands when it desired them to become effective there; or else it would have enacted some other positive legislation definitely limiting and defining the insular taxing powers with respect to these banks in the Islands. *It cannot have intended to leave them wholly tax-free,* as is the necessary result as the statute now stands, unless they are subject to the general taxing powers of the

Philippine Legislature. Nor is it to be presumed that the Congress intended, by mere implication, so widely to depart from the rule of uniformity in taxation in the Islands which it had itself expressly prescribed in Section 2 of the Organic Act; nor so seriously to injure the established Philippine National Bank almost wholly owned by the insular government, the successor to the Agricultural Bank which the Congress itself had manifestly intended to foster as a local national fiscal institution for the Islands by the provision of the Act of March 4, 1907, c. 2908, 34 Stat. 1282, *supra*, quoted *infra*, pp. 50-51, authorizing the insular government to guarantee its income.[21]

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[21] The Philippine National Bank, the government fiscal institution of the Islands, is practically all owned by the Philippine government, and almost a part of that government. This court summarized its organization and ownership in *Springer and Agoncillo* v. *Philippine Islands*, 277 U. S. 189, 198, as follows:

> "The National Bank was created by Act 2612, approved February 4, 1916, subsequently amended by Act 2747, approved Feb. ary 20, 1918, and Act 2938, approved January 30, 1921. The authorized capital of the bank, as finally fixed, was 10,000,000 pesos, consisting of 100,000 shares, of which, in pursuance of the legislative provisions, the Philippine Government acquired and owns 97,332 shares, the remainder being held by private persons. By the original act the voting power of the government-owned stock was vested exclusively in the Governor-General, but by the amended acts now in force that power was 'vested exclusively in a board, the short title of which shall be "Board of Control", composed of the Governor-General, the President of the Senate, the Speaker of the House of Representatives.' The Governor-General was also divested of the power of appointment of the President and Vice-President of the bank, originally vested in him, and their election was authorized to be made by the directors from among their own number." (*Pertinent parts of the Acts are in Appendix III, infra*, pp. 67-74.)

And these conclusions gain redoubled force when it is borne in mind that the Congress has not even expressly extended the provisions in the Federal Reserve Act,—particularly has not extended those of Section 25 of that Act,—to the Islands; and, therefore, has never, at least expressly, authorized the establishment in those Islands of branches of United States national banks at all. (See Point V, *infra*, pp. 43-44).

POINT IV

The Congress, by Section 6 of the present Organic Act for the Philippines expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposd.

As already noted (*supra*, pp. 36-38) the sections of the present Administrative Code of the Philippine Islands under which the taxes here in question,—"capital taxes" and "deposits taxes",—were levied, are almost literal re-enactments of the corresponding sections of the former Philippine Administrative Code of 1916 which was in force in the Islands on August 29, 1916, when the Organic Act was enacted. The sections of the present Administrative Code, Act No. 2711, approved March 10, 1917, under which these taxes were levied, are Sections 1499 and 1502. The corresponding sections of the former Administrative Code of 1916, Act No. 2657, effective July 1, 1916, were Sections 1654 and 1657. The sections of the present Administrative Code are printed above (*ante*, pp. 6-7), and the corresponding sections of the former Administrative Code of 1916 are on pp. 59-61 of Appendix I. **The Administrative Code of 1916 had been enacted by the Philippine Legislature on February 24, 1916, and had gone into effect in the Islands on July 1, 1916, only one month and twenty-nine days before the Congress enacted the "Jones Law" the (then) new Organic Act for the Philippines.**

This court there held that the Governor General could not be supplanted by the legislative power in the exercise of the executive power of control of that National Bank

Necessarily such an important Act as the then so recently adopted Administrative Code of the Islands of 1916 was in the minds of the members of the Congressional committee framing the new Organic Act; and, as it must be conclusively presumed, was in the minds of the Congress when they enacted Section 6 of the new Organic Act on August 29, 1916, expressly providing (39 Stat. at p. 547; *ante*, p. 4):

> "That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States",

without making any exception or limitation whatever as to those Sections 1654 and 1657 of the Administrative Code of 1916 which was then in force in the Islands. This was, therefore, an express provision by the Congress that these sections of the Administrative Code as they then stood should "continue in force and effect" in the Islands until changed by the legislative authority "herein provided",—the Philippine Legislature,—or by Act of Congress. Those sections were carried forward without any substantial change whatever into the present Administrative Code, still in force. They are, in effect, Acts of the Congress itself.[21]

POINT V

There is no Federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands.

As above pointed out in Point I hereof, Section 25[22] of the Federal Reserve Act authorizing the Federal Reserve Board to permit establishment of branches of national banks in foreign countries and in "dependencies or insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been ex-

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[22] As amended by the Acts of September 7, 1916 and September 17, 1919; Appendix I, *infra*, pp. 56-57.

pressly extended to those Islands; and, therefore, is not in force there, any more than is the taxing section of the National Bank Act, or any other part of the National Bank Act, or any other statute of the United States not specifically mentioning those Islands and not specifically extended thereto by any Act of Congress.

It seems necessarily to follow that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and Cebu in the Islands which was offered in evidence by the bank in this case (R. 42-43), **is wholly void, of no effect whatever, and gives no authority for the establishment or existence of those branches in the Philippine Islands.** Whatever else those so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—**they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States.** They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands existing and carrying on business there under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license from the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be established outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended; which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

As above pointed out, it does not appear that the Federal Reserve Board ever licensed any branches of national banks to be established in the Philippine Islands during all of the years from the enactment of the Federal Reserve Act until this license was granted in 1930 for these Manila and Cebu branches of this respondent, the National City Bank of New York.

CONCLUSION

There is no federal limitation whatever preventing the Philippine government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; the taxes are valid; the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila are wrong; the writ of certiorari should issue; and the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance should be reversed and the case remanded with directions to dismiss the action at the plaintiff bank's costs.

Respectfully submitted,

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